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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

H.T.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E048804

(Super.Ct.Nos. J216512 &  
J222722)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Marsha Slough,  
Judge. Petition denied.

Monica Cazares for Petitioner.

No appearance for Respondent.

Ruth E. Stringer, County Counsel, and Ramona E. Verduzco, Deputy County  
Counsel, for Real Party in Interest.

Petitioner H.T.<sup>1</sup> (mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services as to her children, K.K. and F.K. (the children) and setting a Welfare and Institutions Code<sup>2</sup> section 366.26 hearing. Mother argues that the court erred in finding it detrimental to return the children to her care. In the alternative, she contends that the court erred in finding she failed to participate regularly and make substantive progress in the case plan regarding F.K., and thereby terminating services at the six-month hearing. We deny the writ petition.

### FACTUAL AND PROCEDURAL BACKGROUND

#### *K.K.'s Detention*

On August 13, 2007, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition on behalf of K.K., who was three months old at the time. The petition alleged that K.K. came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition included the allegations that mother had a substance abuse problem and a mental illness, both of which had adversely affected her ability to parent K.K.; that mother had left K.K. with a caretaker who suffered from a mental illness and substance abuse problem; that mother and K.K.'s

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<sup>1</sup> Mother is also sometimes referred to as "H.K." However, she filed her writ petition as "H.T."

<sup>2</sup> All further statutory references will be to the Welfare and Institutions Code unless otherwise noted.

father (father)<sup>3</sup> had engaged in domestic violence; and that father's whereabouts were unknown. The detention report stated that mother was hospitalized with liver failure, and her husband, K.K.'s stepfather, was left to care for K.K. When the stepfather came to the hospital with K.K., he was intoxicated and had a blood alcohol level three times the legal limit. K.K. was filthy and wearing urine-soaked clothing. She also had a severe diaper rash. Furthermore, mother reported to the social worker that she suffered from schizoaffective disorder but was not currently taking medication. Mother also reported that she had an extensive psychiatric history that included multiple hospitalizations for suicide attempts.

The detention hearing was held on August 14, 2007. The court detained K.K. and set a jurisdiction/disposition hearing for September 5, 2007.

*Jurisdiction/disposition—K.K.*

In the jurisdiction/disposition report dated September 5, 2007, the social worker recommended that mother be provided with reunification services.

The September 5, 2007, hearing was continued to October 16 so that father could be located and served with notice and a mediation hearing could be held, at mother's request. A mediation hearing was held on October 15. The parties made minor amendments to the section 300 petition and mother agreed to attend an outpatient substance abuse program, consistently attend psychiatric appointments and therapy, and participate in a 12-step program and a domestic violence class. Mother also agreed to

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<sup>3</sup> Father is not a party to this writ petition.

undergo a psychological evaluation, engage in substance abuse testing, and complete a parenting class.

The October 16, 2007, hearing was continued to October 29. At the hearing on October 29, the court found that K.K. came within section 300, subdivisions (b) and (g), declared her a dependent of the court, continued her placement in confidential foster care, and ordered mother to participate in reunification services. The court also ordered mother to submit to random and same-day drug testing. The six-month review hearing was set for April 23, 2008.

*Six-month Status Review Report and Hearing—K.K.*

The social worker filed a six-month review report filed on April 11, 2008, recommending that the court continue services for another six months. The social worker reported that mother's participation in her case plan had been exceptional. As to mother's outpatient treatment program, she had missed only two out of 30 sessions. She had drug tested negative six times and was progressing in her therapy. Mother had also completed a domestic violence program, parenting program, 90-day recovery program at Oasis House (a sober living house), and a three-month substance abuse treatment program. She had further completed a psychotropic medication evaluation, a psychiatric evaluation, and had participated in counseling to address depression, sobriety, and psychological difficulties. Mother had been living at Oasis House since August 29, 2007, and planned on staying there as long as they would allow her to. The social worker further reported that mother was nine months pregnant and was expected to deliver on April 24, 2008. Mother was not in position financially, emotionally, or physically to

have full custody of K.K. plus an infant. However, the social worker opined that mother would be able to reunify in six months.

By the time of the six-month review hearing on April 23, 2008, mother had given birth to another girl, F.K. The court ordered reunification services to continue.

#### *F.K.'s Detention*

On July 25, 2008, CFS filed a section 300 petition on behalf of F.K., who was three months old at the time. The petition alleged that F.K. came within the provisions of section 300, subsections (b) (failure to protect), (g) (no provision for support), and (j) (abuse of a sibling). The petition included the allegations that mother suffered from a substance abuse problem and mental illness. It further alleged that mother negligently failed to provide F.K. with adequate food, clothing, shelter, and/or medical treatment, and that F.K.'s sibling was adjudicated a dependent of the court in August 2007. In the detention report, the social worker stated she had received a telephone call from a childcare provider who said she had custody of F.K. because mother had relapsed. Mother had moved into her own apartment for three weeks in July 2008, but then relapsed on July 22, 2008, when she drank alcohol. She admitted that she had gone to a restaurant with F.K. and ordered two margaritas. She returned to Oasis House with F.K. and asked to be readmitted to their sober living program due to her inability to control her urge to drink alcohol. The Oasis House director confirmed that on July 22, 2008, mother came to the facility intoxicated and unable to care for F.K. The social worker interviewed mother, who said she could not handle being a "dry drunk" any longer and that she struggled with staying sober. Mother also stated that she suffered from mood

disorders, but she was not currently taking medication. She said she had seen her psychiatrist but had not actively maintained her dosage schedule.

At the detention hearing on July 28, 2008, the court detained F.K. in foster care. A jurisdiction/disposition hearing was set for August 18, 2008.

*F.K.'s Jurisdiction/disposition Report and Hearing*

The social worker filed a jurisdiction/disposition report dated August 18, 2008, and recommended that mother be provided with reunification services.

On August 18, 2008, the matter was continued to September 18 for a pretrial settlement conference. The matter was also continued to September 22 for a contested jurisdiction hearing and to September 23 for a contested disposition hearing. At the pretrial settlement conference, the jurisdiction hearing was continued to October 20, and the disposition hearing was continued to October 21. The matter was later continued again.

On October 15, 2008, the social worker filed an addendum report and changed the recommendation to no reunification services because of mother's inability to control her alcohol addiction and chronic mental health issues.

*K.K's 12-Month Status Review Report and Hearing*

The social worker filed a 12-month status review report dated October 15, 2008, regarding K.K., and recommended that reunification services be terminated and a section 366.26 hearing be set. The social worker reported that mother's progress had faltered since the six-month review hearing in that she relapsed and drank alcohol on July 22, 2008.

On July 28, 2008, mother was admitted to a hospital for a few days on a section 5150 as a danger to herself and others. She was diagnosed with “Axis I Schizoaffective disorder” and depression, and was prescribed three psychotropic medications. Mother admitted she was taking only two of them. The doctor reported that mother had a history of depression, suicidal ideation, auditory hallucinations, bulimia, anorexia, and cutting herself to relieve tension. She also had a history of severe physical and mental abuse. The doctor further reported that after mother left Oasis House, she stopped taking her medications, decompensated, and had “increasing suicidality.”

On September 16, 2008, a Team Decision Making meeting was held, during which many issues were discussed, including mother’s extensive medical ailments, psychiatric history, current diagnosis of schizoaffective disorder, multiple hospitalizations for suicide attempts, drug and alcohol histories, and the young ages of her children. As a result of the meeting, mother agreed to go to dependency drug court. She was accepted into the dependency drug court program on September 26, 2008.

Mother admitted that she had problems staying sober, abused psychotropic medications, and made poor choices. She admitted relapsing three times—in December 2006, July 22, 2008, and again on August 9, 2008, while in treatment. Her only income was from her Supplemental Security Income (SSI) checks. Mother admitted that she had a gambling problem and severely mismanaged her money. She reported that she was currently on nine different medications, including several psychotropic medications.

The social worker acknowledged that, during the first eight months of the dependency, mother completed all of her case plan objectives. However, after her relapse

on July 22, 2008, her case plan was revised to include inpatient substance abuse treatment instead of outpatient treatment, continued participation in parenting education, random drug testing, 12-step program meetings, psychotropic medication monitoring, and individual counseling. The social worker opined that mother appeared to have a cyclical pattern. She would benefit from the services provided for a certain period of time, but then would sabotage herself by losing control of her sobriety and reverting back to drinking. The social worker indicated that it appeared that when mother started to feel well, she would go off her medication. The social worker stated she was unable to predict whether mother would be able to break the cycle and stay stable enough to safely parent two children.

The social worker concluded that mother was not in a position to have full custody of K.K. She was not capable of caring for herself and a young child financially, emotionally, or physically. Mother lacked the stability and responsibility to effectively manage her sobriety and her life.

A contested 12-month review hearing was held on October 21, 2008. The court heard testimony from the social worker and mother. The social worker testified that mother was now in an inpatient substance abuse treatment program. Mother testified that she was consistently taking her prescribed medication. Despite CFS's recommendation that the court terminate reunification services, the court decided to extend mother's services. The court believed that mother had shown progress and there was a substantial probability she would reunify with K.K. It continued the matter to the 18-month review hearing.



### *F.K. 's Contested Jurisdiction/disposition Hearing*

By the time of the contested jurisdiction/disposition hearing on November 18, 2008, CFS changed its recommendation with regard to F.K. to providing services for mother. The court found that F.K. came within the provisions of section 300, subdivisions (b), (g), and (j), declared F.K. a dependent of the court, and ordered mother to participate in reunification services. Mother's case plan included the requirements that she submit to random drug testing, participate in substance abuse treatment, a 12-step program and a parenting class, and that she attend individual counseling to address depression, sobriety, psychological difficulties, and her domestic violence history. Mother also agreed to submit to psychiatric medication evaluation and monitoring. The court continued the matter to May 18, 2009, for a six-month review hearing.

### *K.K. 's 18-month Status Review Report and Hearing*

The social worker filed a report dated February 9, 2009, recommending that the court establish a permanent plan of adoption for K.K. The social worker reported that as of February 9, 2009, mother had received 18 months of services for K.K. and seven months for F.K. Mother completed the referred substance abuse treatment, but had relapsed twice—on July 22, 2008 and August 9, 2008—since receiving treatment. The social worker opined that mother was still not in a position to have custody of K.K. Although mother had made substantial progress on her case plan, she failed to benefit from the services, as demonstrated by her relapses and continued dependence on sober living environments and community support. Mother had not shown her ability to maintain stable mental health for a reasonable amount of time. In an addendum report,

the social worker reported that mother was most recently diagnosed with bipolar disorder, “severe with psychotic features . . . .” Mother had been sober for five months, but the social worker opined that her sobriety and stability were too recent to be able to warrant reunification.

The social worker filed another addendum report dated March 4, 2009. The report stated that the children were placed together in an adoptive home on March 2. The social worker continued to recommend that mother’s parental rights be terminated. The social worker reported that mother struggled with manic depression and “extreme shifts in thoughts, energy, mood, and behavior.” Mother had suffered from her mental health illnesses since her late teens. She had a pattern of being stable for a period of about two years and then decompensating, resulting in relapses. Her unstable mental health was exacerbated by her abuse of alcohol. Her pattern was that she would start drinking, stop taking her prescribed psychotropic medication, and engage in high-risk behavior that included gambling, self-medicating (pill “popping”), prostitution, temporary relationships with men, denying her problems, getting pregnant, and moving from state to state. Mother’s behavior was unpredictable. The social worker concluded the children would be at risk of detriment if placed with mother. K.K. was under two years of age and required a high degree of supervision, since she was at a curious toddler stage. F.K. was under one year old and was a demanding infant who would soon be walking.

At the 18-month review hearing on April 13, 2009, the court, on its own motion, consolidated F.K.’s case with K.K.’s case, since the issues and evidence were the same. CFS informed the court that mother had recently begun a therapy program called, “Wait,

Watch, and Wonder,” and asked that the program be added as a component of mother’s case plan for both children. The court agreed and found there were exceptional circumstances to continue mother’s services until the next hearing. The court continued the matter to May 18, 2009, to coincide with F.K.’s six-month review hearing.

*F.K.’s Six-month Status Review Report and Hearing*

The social worker filed a six-month review report on May 6, 2009, recommending that the court terminate services as to F.K. and establish adoption as the permanent plan.

The social worker subsequently filed an addendum report on May 18, 2009, recommending that the court terminate mother’s reunification services as to the children and set a section 366.26 hearing. The social worker stated that on May 7, mother reported she had had a manic episode three weeks earlier in April. Mother notified her psychiatrist and was prescribed a drug that “made her down” and caused her to be “slow.” The social worker further noted that on August 9, 2009, mother will have received two full years of reunification services for K.K. The social worker stated that, despite mother’s exceptional job of completing her case plan requirements, the prognosis for the family was poor due to her chronic mental health issues. The social worker was concerned that at any moment mother could flee, relapse, slip into a manic state, and fail to protect the children.

The May 18, 2009 hearing was continued several times until July 13.

The social worker filed an addendum report dated June 17, 2009, and reported that on May 18 after mother attended the court hearing that morning, mother was hospitalized and placed on a psychiatric hold under section 5150. The hospital records noted that

mother was acting “very angry, agitated, and suicidal upon admission.” She banged her head against the wall and tried to use a needle to harm herself. She required restraint and seclusion. The social worker spoke with mother’s therapist, Dr. Jane Smith, on May 20. Dr. Smith reported that mother’s behavior had become more erratic over the past month. Dr. Smith stated, “One day, [mother] took off on a train ride to nowhere,” and on another day, mother had “downed four Monster energy drinks at one sitting giving herself caffeine intoxication.” The social worker spoke to mother on the telephone on May 26, and mother stated that her depression had gotten to be too much and her medications were not working for her anymore.

In an addendum report dated July 9, 2009, the social worker reported that mother had undergone a comprehensive psychological evaluation on June 4 and June 11, 2009, by Dr. James Pace. Dr. Pace noted that mother had been involuntarily hospitalized in a psychiatric facility on at least 28 different occasions, with the last admission occurring in May 2009. Dr. Pace opined that her most recent hospitalization suggested that she remained “episodically unstable and therefore a potential future danger to herself and possibly to others[,] including her children.”

### *18-month Review Hearing*

The court held a contested 18-month review hearing on July 13, 2009. The court heard extensive testimony from the director of the sober living facility where mother was currently living, mother’s therapist, mother’s parenting course coordinator, and mother. After carefully considering all the evidence, the court concluded that the return of the children to mother’s custody would create a substantial risk of detriment to their safety

and well-being. The court further found that reasonable services had been provided. The court terminated services and set a section 366.26 hearing for November 12, 2009.

### ANALYSIS

#### The Court Properly Concluded that Return of the Children to Mother Would Create a Substantial Risk of Detriment to the Children

Mother contends there was insufficient evidence to support the court's finding that it would be detrimental to return the children to her care. She asserts that she completed her case plan, had overcome her substance abuse issues, had adequately addressed her mental health issues, and that she had an appropriate childcare plan in the event she needed to be hospitalized. Mother further argues that her mental illness alone should not deprive her of the right to have custody of her children. We disagree.

The statute governing the 18-month review hearing is section 366.22, which provides that at the 18-month hearing, “[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, *by a preponderance of the evidence*, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (§ 366.22, subd. (a), italics added.) “In making its determination, the court shall review and consider the social worker’s report and recommendations and . . . shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian . . .” (*Ibid.*) “Where, as here, a discretionary power is inherently or by express statute vested in the trial judge, his or her exercise of that wide

discretion must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” [Citations.]’ [Citations.] In the presence of substantial evidence, appellate justices are without the power to reweigh conflicting evidence and alter a dependency court determination. [Citations.]” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

At the outset, we acknowledge that mother completed her case plan requirements, including a substance abuse program, and that she visited her children faithfully. However, section 366.22 focuses on “the child’s well-being at the time of the review hearing rather than on the initial basis for juvenile court intervention. [Citation.]” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) Thus, “the question whether to return a child to parental custody is not governed solely by whether the parent has corrected the problem that required court intervention; rather, the court must consider the effect such return would have on the child.” (*Id.* at p. 901.)

Here, there was more than enough evidence to support the court’s finding that the return of the children to mother would create a substantial risk of detriment to their physical or emotional well-being. Although mother had completed substance abuse treatment, she had relapsed twice—on July 22, 2008, and August 9, 2008—since receiving treatment. Mother admitted to being an alcoholic, that she drank to get drunk, and that she had problems with staying sober. The social worker was concerned because mother appeared to have a cyclical pattern. Mother benefitted from the services provided for a certain period of time but then would sabotage herself by reverting back to drinking.

Just when she was stable on her medication and her living situation, her mood would change and she would engage in a destructive “cyclical pattern of despair.” The social worker opined that when mother started to feel well, she would go off her medication. Mother’s abuse of alcohol would exacerbate her unstable mental health. Her behavior was unpredictable and she could, at any moment, relapse on alcohol and/or stop taking her psychotropic medication.

Contrary to mother’s claim that she had adequately addressed her mental health issues, she was unstable and unpredictable, mentally. Mother struggled with manic depression and extreme shifts in thoughts, energy, mood, and behavior. She reported that she had a manic episode in April 2009. On May 18, 2009, mother was placed on a section 5150 psychiatric hold. When admitted to the hospital, mother was acting very angry, agitated, and suicidal. She banged her head against the wall and tried to use a needle to harm herself. She required restraint and seclusion. On May 20, mother’s therapist reported that mother’s behavior had become more erratic over the past month. One day, “[mother] took off on a train ride to nowhere” and on another day, she drank four Monster energy drinks at one sitting and gave herself caffeine intoxication.

Moreover, after performing a comprehensive psychological evaluation on mother in June 2009, Dr. Pace noted that mother had been involuntarily hospitalized in a psychiatric facility on at least 28 different occasions. He opined that her most recent hospitalization in May 2009 suggested that she remained “episodically unstable and therefore a potential future danger to herself and possibly to others[,] including her

children.” The social worker had valid reason to be concerned that at any moment mother could flee, relapse, slip into a manic state, and fail to protect the children.

We conclude there was sufficient evidence to support the court’s determination that the return of the children to mother would create a substantial risk of detriment to their physical and emotional well-being. As to mother’s alternative claim that the court abused its discretion in failing to continue her services as to F.K. at the six-month hearing, we reject such claim. For the same reasons stated above, we conclude there was no substantial probability that F.K. would be returned to mother’s custody within six months. (§ 366.21, subd. (e).) Thus, the court properly terminated services.

#### DISPOSITION

The writ petition is denied.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.